

BOARD OF APPEALS CASE NO. 5310

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BEFORE THE

APPLICANT: Meisel Capital 1, LLC

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ZONING HEARING EXAMINER

REQUEST: Variance to allow an existing building within the setback and with less than the required parking; 1-A Bel Air South Parkway, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/20/02 & 11/27/02

HEARING DATE: January 22, 2003

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Record: 11/22/02 & 11/29/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Meisel Capital 1, LLC, and co-applicant, Chesapeake Bank of Maryland, are requesting a variance, pursuant to Harford County Code Section 267-39B, Table XII, to allow an existing building to encroach into the 35 foot rear yard setback (20 feet proposed) and to encroach into the required five foot side yard setback (2 feet proposed), and a variance, pursuant to Section 267-25D, to allow less than the required 28 parking spaces (23 spaces existing) and less than the required 18 spaces (15 spaces existing) on future Lot #2 in the B3 District.

The subject parcel is located at 1-A Bel Air South Parkway, and is more particularly identified on Tax Map 56, Grid 2D, Parcel 64. The parcel consists of 37,630 square feet, is zoned B3/General Business District and is within the First Election District.

Mr. Rowan Glidden appeared and qualified as an expert landscape architect. Mr. Glidden described the subject parcel, the improvements currently existing and planned in the future as well as surrounding uses. Mr. Glidden's testimony was un rebutted. The subject parcel consists of 0.866± acres and is currently improved by two buildings and operates in full conformance with Harford County laws and regulations. One building is an office building and the other is currently vacant, although was built with the intention of housing a bank. Chesapeake Bank of Maryland wishes to establish a branch at this location but does not want to become involved with a lease of any of the adjoining parcel; consequently, the Applicant has submitted a request to allow subdivision of the parcel.

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The variance requested in this case all result from the subdivision process. Access to both buildings will remain from Bel Air South Parkway after subdivision. In fact, after subdivision and approval of variances there will be no visible change to the existing property at all. The witness pointed out that there are 6 spaces on the west side of Lot #1 that are not counted in the requirements for either Lot #1 or Lot #2. The Applicant intends that the two lots will share these spaces by way of a recorded easement. If these spaces were counted with either lot, the requirements of total parking spaces would be met. In the opinion of Mr. Glidden, the parcel is unique. It has existing improvements and the variances requested result from subdivision of the two uses. As a practical matter these are paper changes not visible on the property itself if granted. By using an easement that allows the two parcels to share the additional 6 spaces, the spirit and intent of the zoning Code is satisfied. Lastly, in the opinion of the witness, the variances make good planning and zoning sense and result in no adverse impacts to any neighboring or adjoining property. This is a small corner lot and its configuration contributes to much of the need for this request giving further credence to the notion that the parcel is uniquely configured. Mr. Glidden pointed out that such subdivisions of property are commonplace in Harford County and elsewhere and disallowance of the requested variances would automatically result in non-compliance with existing setbacks and numbers of parking spaces.

Ms. Nancy Lipski appeared on behalf of the Department of Planning and Zoning. Ms. Lipski agreed with all of the testimony offered by Mr. Glidden and stated that the Department of Planning and Zoning also considers the parcel unique. Further, the Department recommends approval of the requested variances finding that no adverse impacts would result from approval.

There were no persons that appeared in opposition to the request.

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Conclusion and Recommendation:

The Applicant, Meisel Capital 1, LLC, and co-applicant, Chesapeake Bank of Maryland, are requesting a variance, pursuant to Harford County Code Section 267-39B, Table XII, to allow an existing building to encroach into the 35 foot rear yard setback (20 feet proposed) and to encroach into the required five foot side yard setback (2 feet proposed), and a variance, pursuant to Section 267-25D, to allow less than the required 28 parking spaces (23 spaces existing) and less than the required 18 spaces (15 spaces existing) on future Lot #2 in the B3 District.

The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

For the reasons stated by the Applicant’s expert witness and the representative of the Department of Planning and Zoning, the Hearing Examiner finds that the subject parcel is unique and that the requested variances will not result in any adverse impacts to adjacent or neighboring properties. In recommending approval, the Hearing Examiner notes that a grant of the variances will result in no physical change to the appearance or configuration of the existing parcel or uses thereon, thus, the purposes of the Code are satisfied. Subdivisions of property are commonplace in Harford County and disallowance of the requested variances would result in a disallowance of the subdivision, an unnecessary hardship given all of the facts and circumstances of the case.

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For the foregoing reasons, the Hearing Examiner recommends approval, subject to the following conditions:

1. A preliminary site plan be submitted to the Department of Planning and Zoning for review and approval.
2. A final plat shall be submitted to the Department of Planning and Zoning for approval and recordation in the Harford County land Records.
3. The Applicant shall submit documented proof demonstrating the ability of both parcels to utilize the 30-foot right-of-way and 6 additional (shared) parking spaces. An easement agreement shall be created between Lot 1 and Lot 2 for shared use of the parking areas and driveway.
4. The drive cut between the Burger King restaurant operation and the subject parcel shall continue to have ballards in place preventing use of the drive.

Date FEBRUARY 25, 2003

**William F. Casey
Zoning Hearing Examiner**